

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

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6 UNITED STATES OF AMERICA ) 06-CR-6042(L)  
7 )  
8 vs. ) Rochester, New York  
JOSE DE LA ROSA, ) October 14, 2008  
Defendant. ) 1:30 p.m.  
- - - - - X

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DAVID G. LARIMER  
UNITED STATES DISTRICT JUDGE

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15 BY: FRANK H. SHERMAN, ESQ.  
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Appearing on behalf of the Defendant

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ALSO PRESENT: Felipe de Chateuvieux, Interpreter

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1                           P R O C E E D I N G S

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3                           (WHEREUPON, the defendant is present).

4                           THE COURT: Good afternoon.

01:42PM 5                           MR. SHERMAN: Good afternoon.

6                           THE COURT: Mr. De La Rosa needs an interpreter, so we  
7 will swear in Mr. De Chateuvieux.

8                           (WHEREUPON, the interpreter was sworn).

9                           THE COURT: Good afternoon, Mr. De La Rosa.

01:42PM 10                          THE DEFENDANT: Good afternoon, Judge.

11                          THE COURT: And to counsel, of course.

12                          MR. OKAY: Good afternoon, Your Honor.

13                          All right, this case, as we know, is scheduled for trial  
14 and jury selection tomorrow. We had a pretrial last week and it  
01:43PM 15 appeared at that time that we were going to trial.

16                          And the Court, as I suspect you did, spent some time  
17 over the weekend preparing for that event, but I was advised this  
18 morning that maybe there is to be a change of plea this afternoon.

19                          Is that the case?

01:43PM 20                          MR. OKAY: Your Honor, Mr. De La Rosa's indicated that he  
21 will enter into a plea pursuant to a written plea agreement.

22                          THE COURT: All right. Which I don't think I have,  
23 but --

24                          MR. SHERMAN: I have an extra copy, Your Honor.

01:43PM 25                          THE CLERK: Thank you.

1           THE COURT: All right, Mr. De La Rosa, is that your  
2 understanding as to why we're here this afternoon, because you are  
3 prepared to plead guilty to the one count indictment pursuant to a  
4 plea agreement?

01:44PM 5           THE DEFENDANT: Yes.

6           THE COURT: All right. We need to take some time to go  
7 through this, especially in light of the lateness that this plea  
8 is offered, but whether it occurs today or a month ago, we still  
9 would go through the same process. And we take some time to make  
01:44PM 10 sure that you do understand what's in this plea agreement; we talk  
11 to you to make sure you understand the potential punishment that  
12 could result if you plead guilty; and we also want to make sure  
13 you understand all of your legal and constitutional rights in  
14 connection with this proceeding. So as we go through this, if you  
01:44PM 15 have any questions, now's the time to ask them.

16           Do you understand all of that?

17           THE DEFENDANT: Yes.

18           THE COURT: This is a court proceeding, you will be asked  
19 questions and I expect that you'll answer those questions  
01:45PM 20 truthfully. To make sure you understand the importance of that, I  
21 want to take your statements here under oath. So I'd ask you to  
22 raise your right hand as a witness and I will swear you in.

23           (WHEREUPON, the defendant was sworn).

24           THE COURT: All right, I've been just handed a plea  
01:45PM 25 agreement of some 19, 20 pages. Have you reviewed the plea and

1 the plea agreement with your lawyer?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is it fair to say that you've talked to your  
4 lawyer, Mr. Okay, several times during the past week or so in  
01:45PM 5 deciding whether to go to trial or to plead guilty; is that a fair  
6 statement?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And I take it after all that discussion  
9 today, you've elected to plead guilty according to this plea  
01:46PM 10 agreement; is that what you wish to do here today?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Tell me how old you are now, sir.

13 THE DEFENDANT: 35 years old.

14 THE COURT: All right. And how far did you get in your  
01:46PM 15 schooling?

16 THE DEFENDANT: I finished high school and I have some  
17 university, college degrees.

18 THE COURT: All right. Was your high school in this  
19 country or --

01:46PM 20 THE DEFENDANT: The Dominican Republic.

21 THE COURT: Okay. Are you taking any medication or drugs  
22 today which you think affect your mind and your clearness of  
23 thought?

24 THE DEFENDANT: No, sir.

01:46PM 25 THE COURT: All right. Well, I've just been handed this

1 plea agreement, so it's new to me, but, Mr. Sherman, perhaps you  
2 could start us off and we'll go through this?

3 Let me ask before we do that, Mr. De Chateuvieux, have  
4 you had the opportunity to work as an interpreter interpreting  
01:47PM 5 this agreement?

6 THE INTERPRETER: Yes, Your Honor. I did interpret this  
7 several times; and then on Friday or Saturday, October 11, I went  
8 and line-by-line interpreted at MCJ.

9 THE COURT: Okay, thank you.

01:47PM 10 And, Mr. Sherman, this is the agreement that we're to  
11 speak of as the same one Mr. De Chateuvieux utilized when he  
12 talked about this with Mr. De La Rosa?

13 MR. SHERMAN: Yes, it is, Your Honor.

14 THE COURT: All right. Mr. Sherman, perhaps you can  
01:47PM 15 start us off? Mr. Sherman's going to tell me about this  
16 agreement, and I may interrupt him from time to time and ask you  
17 if you understand what was just said and you agree to it, all  
18 right?

19 THE DEFENDANT: Yes, sir.

01:48PM 20 THE COURT: Mr. Sherman?

21 MR. SHERMAN: Your Honor, the defendant is agreeing to  
22 plead guilty to Count 1 of the superseding indictment which  
23 charged a violation of Title 21, United States Code, Section 846,  
24 specifically, a conspiracy to distribute and possess with intent  
01:48PM 25 to distribute 5 kilograms or more of cocaine.

1           That charge carries a mandatory minimum term of  
2 imprisonment of 10 years; a maximum possible sentence of a term of  
3 imprisonment of life; a fine of \$4 million; a mandatory \$100  
4 special assessment; and a term of supervised release of at least  
01:48PM 5 years and up to life.

6           THE COURT: All right. Mr. De La Rosa, there may be  
7 other parts of this agreement that effect the sentence and we'll  
8 talk about that in a minute, but do you understand that under the  
9 statute, a plea to this conspiracy to distribute 5 kilos or more  
01:49PM 10 subjects you to a sentence of a minimum term of 10 years  
11 imprisonment, and up to life imprisonment; with the related parts  
12 of the sentence in terms of fine and supervised release of 5 years  
13 to life?

14           Do you understand those maximum and minimum penalties?

01:49PM 15           THE DEFENDANT: Yes, sir.

16           THE COURT: All right.

17           MR. SHERMAN: There is also a forfeiture allegation in  
18 the superseding indictment which the defendant is admitting which  
19 alleges that \$1 million in United States currency is subject to  
01:49PM 20 forfeiture as a result of participation in this conspiracy.

21           Mr. De La Rosa would be jointly and severally liable for  
22 that amount along with the other members of the conspiracy.

23           THE COURT: Am I correct that there's no money that would  
24 actually be handed over? It would be more in the nature of an  
01:49PM 25 entry of judgment?

1 MR. SHERMAN: That's correct, Your Honor.

2 THE COURT: All right. Do you understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 MR. SHERMAN: Your Honor, during the time that

01:50PM 5 Mr. De La Rosa is on supervised release, if he were to violate any  
6 of the terms or conditions of his supervised release, he could be  
7 required under the agreement to serve in prison all or part of the  
8 term of supervised release up to 5 years without credit for time  
9 previously served on supervised release.

01:50PM 10 THE COURT: All right. Do you understand that, sir?

11 THE DEFENDANT: Yes, sir.

12 MR. SHERMAN: The parties understand that the sentencing  
13 guidelines are not binding on the Court, but that the Court must  
14 consider them.

01:50PM 15 And the parties have done a guidelines calculation,  
16 which is set forth in Section III of the agreement, starting on  
17 page 4. As a result of that calculation, which includes an  
18 offense level -- a base offense level of 36, and a three level  
19 enhancement for role in the offense, the parties compute that

01:51PM 20 Mr. De La Rosa would come out as a total offense level of 36, and  
21 a criminal history category of I, which would make his guideline  
22 sentencing range a term of imprisonment of 188 to 235 months; a  
23 fine of \$20,000 to \$4 million; a \$100 special assessment; and a  
24 period of supervised release of 5 years.

01:51PM 25 Notwithstanding those guideline calculations, it is the

1 statutory minimum and maximum penalties that we've already  
2 discussed that ultimately control.

3 THE COURT: All right. Mr. De La Rosa, you understand  
4 that based on your very low criminal history category of I, and  
01:51PM 5 based on the amount drugs and the nature of the offense, the  
6 lawyers believe your guideline range is 188 to 235 months,  
7 together with the fine range and supervised release range which is  
8 all discussed at paragraph 12?

9 Do you understand that guideline range?

01:52PM 10 THE DEFENDANT: Yes, sir.

11 THE COURT: And, again, I know we're going to talk about  
12 Section IX, which could effect that, but if that section does not  
13 apply, you need to understand the guideline range is what it is,  
14 188 to 235 months.

01:52PM 15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: The Court, that's me, must consider the  
18 guidelines, but it's not mandatory. But this agreement also  
19 provides that neither the Government nor your lawyer can ask me  
01:52PM 20 for a non-guideline sentence, except insofar as it relates to  
21 Section IX, the cooperation section.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Anything else about the guidelines? If not,  
01:53PM 25 we might talk about the appeal waiver.

1                   MR. SHERMAN: Yes, Your Honor. There is an appeal waiver  
2 which is set forth on page 18 and which provides that the  
3 defendant will waive any right to appeal or collaterally attack  
4 any component of the sentence if it falls within or is less than  
01:53PM 5 the sentencing range set forth in paragraph 12 of the agreement.

6                   The Government makes a similar waiver for any sentence  
7 that is within the range set forth in paragraph 12 or above it.

8                   THE COURT: Do you understand that, Mr. De La Rosa?

9                   THE DEFENDANT: Yes, sir.

01:54PM 10                  THE COURT: That means any sentence I impose, 235 months  
11 or less, by this agreement you give up the right to challenge on  
12 appeal or by a collateral proceeding called "*habeas corpus*."

13                  Do you understand that?

14                  THE DEFENDANT: Yes, sir.

01:54PM 15                  THE COURT: And that means -- let's suppose there is some  
16 information that you provide under Section IX, the cooperation  
17 agreement, and there's some application for me to reduce the  
18 sentence. As long as my final sentence is less than 235 months,  
19 you can't appeal that, even if you think I should have given you  
01:54PM 20 more of a reduction.

21                  Do you understand that?

22                  THE DEFENDANT: Yes, sir.

23                  THE COURT: Okay, I think it's just good to put all this  
24 out so there's no confusion later on.

01:55PM 25                  Do you want to talk now about the cooperation provision?

1                   MR. SHERMAN: Yes, I did just want to mention, Your  
2 Honor, there is on page 8 a section relating to the fact that  
3 Mr. De La Rosa is not a citizen of the United States, and  
4 acknowledging that he's aware that conviction in this case may  
01:55PM 5 have some effect on his status in the United States.

6                   THE COURT: Do you understand that, Mr. De La Rosa? That  
7 a conviction of this crime and a sentence would effect your  
8 ability to remain in this country?

9                   Do you understand that?

01:55PM 10                  THE DEFENDANT: Yes, sir.

11                  THE COURT: Has there been an Immigration or  
12 Homeland Security detainer filed yet?

13                  MR. SHERMAN: Yes, there is a detainer on him, Your  
14 Honor.

01:56PM 15                  THE COURT: Do you understand that's a separate  
16 proceeding before a separate judge, but --

17                  THE DEFENDANT: Yes, sir.

18                  THE COURT: -- I would assume a conviction of this type  
19 would result in his deportation?

01:56PM 20                  MR. SHERMAN: In all likelihood it would, Your Honor.  
21 And, in fact, there were proceedings pending against  
22 Mr. De La Rosa before he was arrested in this case.

23                  THE COURT: All right. Do you understand that, sir?

24                  THE DEFENDANT: Yes.

01:56PM 25                  THE COURT: All right. That would be in the

1 Dominican Republic, I assume?

2 MR. SHERMAN: Again, that's not my bailiwick, but I would  
3 assume that they would send him back to the Dominican Republic,  
4 which is his country of origin.

01:56PM 5 THE COURT: All right. So you understand that, sir?

6 That this conviction would most likely result in your deportation  
7 at some point.

8 Do you understand?

9 THE DEFENDANT: Yes, sir.

01:57PM 10 THE COURT: Okay. Your Honor, we did mention earlier the  
11 forfeiture, and there is a section starting on page 10 of the  
12 agreement which does provide that a judgment of \$1 million will be  
13 entered against the defendant as part of the resolution of this  
14 case.

01:57PM 15 With respect to Section IX, the cooperation section,  
16 Your Honor, the parties have agreed that if Mr. De La Rosa  
17 complies with all the terms and conditions of this agreement and  
18 provides substantial assistance in the investigation or  
19 prosecution of other persons who have committed offenses, the  
01:57PM 20 Government will move the Court at sentencing to depart downwards  
21 from the guidelines under Section 5K1.1, or it may also ask the  
22 Court to impose a sentence below the statutory minimum term of  
23 imprisonment pursuant to Title 18, United States Code,  
24 Section 3553(e).

01:58PM 25 The Government reserves the right whether to make the

1 motion under both provisions or just one, and the defendant  
2 understands that the making of that motion is within the sole  
3 discretion of the United States Attorney's Office.

4                Likewise, the defendant understands that the decision to  
01:58PM 5 grant such a motion, and the ultimate extent of any downward  
6 departure are matters solely within the discretion of the Court.

7                It's further agreed and understood by the defendant that  
8 under no circumstances will the United States Attorney's Office  
9 make a downward departure motion that recommends a sentence less  
01:58PM 10 than the low end of the range for guidelines offense level 26,  
11 which in practical terms is 63 months.

12               THE COURT: Is what?

13               MR. SHERMAN: 63 months. There is no commitment to make  
14 that recommendation, but that is the lowest that the Government  
01:59PM 15 anticipates recommending based on whatever assistance the  
16 defendant provides.

17               THE COURT: Well, first off, for that recommendation, the  
18 motion by the Government would have to be made under the statute  
19 as well as under 5K?

01:59PM 20               MR. SHERMAN: Yes, correct, both. So we have not  
21 committed to making such a recommendation, but the defendant's  
22 been told that we think there is the potential for him to earn  
23 that type of a recommendation if he fulfills all his obligations  
24 with regard to the assistance.

01:59PM 25               THE COURT: All right. Well, Mr. De La Rosa, do you

1 think you understand this cooperation aspect here?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you carefully reviewed Section IX of the  
4 plea agreement with your lawyer?

02:00PM 5 THE DEFENDANT: Yes.

6 THE COURT: And you understand there are three people  
7 involved in this? You, the Government and then me.

8 THE DEFENDANT: Yes.

9 THE COURT: And you understand that obviously you go  
02:00PM 10 first in the sense that you're under no obligation under the law  
11 to cooperate, but you've decided to do that. And I advise you  
12 that you should do that fully and completely because when you're  
13 through, then the Government's going to have to decide whether you  
14 have provided substantial assistance and whether they want to move  
02:00PM 15 for a departure under the guidelines which allows me to sentence  
16 below the guideline range; or the Government also reserves the  
17 right to move for a departure under the statute, and if they do  
18 that, then I can sentence you below 10 years.

19 But Mr. Sherman has just said that at this point there's  
02:01PM 20 no promise that they would move under both or either because it  
21 depends on your cooperation and whether it is full and complete  
22 and substantial.

23 Do you understand that?

24 THE DEFENDANT: Yes.

02:01PM 25 THE COURT: The Government has to act in good faith here

1 because this is a contract. But you also should understand if you  
2 do everything you're supposed to do and the Government files  
3 either the motion under 5K or under the statute, Section 3553(e),  
4 then it's up to me to decide what to do with that motion: Whether  
02:01PM 5 to grant it, grant it in part, deny it. All those options are  
6 open to me.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So I have a lot of discretion. If the  
02:02PM 10 Government says, Judge, we want you to sentence Mr. De La Rosa to  
11 10 years, and the motion is made under both the statute and the  
12 guidelines, I could grant that motion or I could reduce it even  
13 further if I wanted to.

14 Do you understand that?

02:02PM 15 THE DEFENDANT: Yes, sir.

16 THE COURT: But it works the other way, too. The  
17 Government and your lawyer could ask me to grant a reduction to a  
18 certain level and I could decide I don't think that I will do  
19 that.

02:02PM 20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So Mr. Sherman has told you that under no  
23 circumstance will the Government ask me to impose a sentence of  
24 less than 63 months.

02:03PM 25 Do you understand that?

1                   THE DEFENDANT: Yes, sir.

2                   THE COURT: I don't think you should take Mr. Sherman's  
3 statement as a promise that that's what they will recommend. He's  
4 saying that's sort of the floor; the Government won't recommend  
02:03PM 5 anything below that.

6                   Do you understand that?

7                   THE DEFENDANT: Yes, sir.

8                   THE COURT: Now, in spite of what they recommend, I still  
9 have some discretion to go down or up.

02:03PM 10                  Do you understand that?

11                  THE DEFENDANT: Yes, sir.

12                  THE COURT: And I would never tell you today what I'm  
13 going to do, mostly because I don't know enough about you and I  
14 certainly don't know what you might do in the future relative to  
02:03PM 15 cooperation.

16                  Do you understand that?

17                  THE DEFENDANT: Yes, sir.

18                  THE COURT: Do you think you have any promise or  
19 understanding as to what the sentence will be from the Court, from  
02:03PM 20 anybody, your lawyer, the Government or the law enforcement  
21 officers? Any promise do you think you have?

22                  THE DEFENDANT: No, nobody has promised me.

23                  THE COURT: Okay. Well, that's good because I don't know  
24 what I'm going to sentence you to so I don't know how anybody  
02:04PM 25 could promise you.

1           All right, anything else about the cooperation section?

2           MR. SHERMAN: Your Honor, only that there are obviously  
3 specific provisions in the agreement as to what happens if  
4 Mr. De La Rosa were to breach his obligation under that section,  
02:04PM 5 and I'm not going to go through all those now, but as  
6 Mr. De Chateuvieux has said, they've gone through this plea  
7 agreement line-by-line and I assume that Mr. De La Rosa  
8 understands what happens if he breaches.

9           THE COURT: All right. You also understand,

02:04PM 10 Mr. De La Rosa, that once you enter the plea today, you don't have  
11 a right to change your mind tomorrow or next week or next month  
12 about pleading guilty?

13           Do you understand that?

14           THE DEFENDANT: Yes, sir.

02:05PM 15           THE COURT: And that means, for instance, if down the  
16 road you're unhappy with the sentence that I give to you, you  
17 can't tell me at that point, well, Judge, I change my mind about  
18 pleading guilty. It doesn't work that way.

19           Do you understand that?

02:05PM 20           THE DEFENDANT: Yes, sir.

21           THE COURT: Okay. Let's talk a little bit about the  
22 elements and the factual basis.

23           MR. SHERMAN: Your Honor, as charged in Count 1, there  
24 would be three elements which the Government would have to prove  
02:05PM 25 beyond a reasonable doubt.

1           The first is the existence of the conspiracy charged in  
2 Count 1 of the superseding indictment.

3           The second element would be that the defendant knowingly  
4 became a member of that conspiracy.

02:05PM 5           And the third element would be that a quantity of at  
6 least 5 kilograms of a mixture or substance containing cocaine was  
7 reasonably foreseeable to the defendant as being within the scope  
8 of the conspiracy.

9           THE COURT: All right, sir, those are the elements or the  
02:06PM 10 things the Government was prepared to prove starting tomorrow at  
11 the trial.

12           Do you understand those elements of this offense of  
13 conspiracy?

14           THE DEFENDANT: Yes.

02:06PM 15           THE COURT: All right. Sir, there is a section here  
16 called the factual basis, which is set forth here at paragraph 3  
17 and paragraph 4 -- excuse me, page 3 and page 4 of the agreement.

18           Do you remember going over those when the interpreter  
19 was helping you?

02:06PM 20           THE DEFENDANT: Yes.

21           THE COURT: And we'll go over them in a bit, but we'll  
22 start with this: Do you remember that those are true and accurate  
23 statements about what your conduct was with Mr. Jose  
24 Castillo-Martinez and Frank DeJesus?

02:07PM 25           THE DEFENDANT: What was the question again?

1                   THE COURT: In these paragraphs Mr. Jose  
2 Castillo-Martinez and Mr. Frank DeJesus are mentioned in  
3 connection with some activities that you participated in.

4                   Do you remember when you went over these whether they  
02:07PM 5 were true and accurate statements about your conduct?

6                   THE DEFENDANT: Yes.

7                   THE COURT: All right. Specifically -- just because we  
8 have a language issue here, that we don't speak Spanish and you  
9 don't speak or read English -- this agreement says in furtherance  
02:07PM 10 of the conspiracy in about November of 2002, you spoke with Jose  
11 Castillo-Martinez and Frank DeJesus and others in the  
12 New York City, Passaic, New Jersey area concerning large  
13 multi-kilogram quantities of cocaine being distributed to you and  
14 to others.

02:08PM 15                   Did you have those conversations with those folks?

16                   THE DEFENDANT: Yes.

17                   THE COURT: And there's no question that you know  
18 Mr. Jose Castillo-Martinez? You know him, don't you?

19                   THE DEFENDANT: Yes.

02:08PM 20                   THE COURT: And you know him to be a person involved in  
21 distribution of drugs?

22                   THE DEFENDANT: Yes.

23                   THE COURT: And Mr. Frank DeJesus, you know him as well?

24                   THE DEFENDANT: Yes.

02:08PM 25                   THE COURT: And he also is involved in this business of

1 assisting in the distribution of drugs?

2 THE DEFENDANT: Yes.

3 THE COURT: Paragraph 5(b) here says that in furtherance  
4 of this conspiracy, around November 2002 and in February of 2003  
02:08PM 5 you met at various times with Mr. DeJesus and  
6 Mr. Castillo-Martinez and others regarding the payment for drugs  
7 that you got back in November of 2002.

8 Did you meet with those people about getting money  
9 together to pay for the drugs that you received?

02:09PM 10 THE DEFENDANT: Yes.

11 THE COURT: All right. The agreement also provides here  
12 that the drug quantity that you're charged with as far as relevant  
13 conduct is at least 50, but not more than 150 kilograms of cocaine  
14 is the drug quantity that affects the guidelines here. That  
02:09PM 15 doesn't mean that you yourself handled 50 kilos, but that you did  
16 or you understood and reasonably foresaw that others in this  
17 business handled, possessed and distributed that amount of drugs.

18 Do you understand that between 50 and 150 kilogram  
19 quantity is what's involved here?

02:10PM 20 THE DEFENDANT: Yes.

21 THE COURT: This factual basis is a very brief summary of  
22 what I expect the Government would prove starting tomorrow if this  
23 case went to trial.

24 I ask the Government if there's anything else by way of  
02:10PM 25 proffer as to the factual basis the Government would articulate at

1 this time?

2 MR. SHERMAN: No, Your Honor. We have previously set  
3 forth to Mr. De La Rosa much of the anticipated proof, which would  
4 include that he did take delivery in November of 2002 of a  
02:10PM 5 substantial amount of cocaine arranged through Jose  
6 Castillo-Martinez, and that over the next several months he was in  
7 contact with Mr. DeJesus and Mr. Castillo-Martinez about  
8 completing payment for that quantity of cocaine, as well as for  
9 some cocaine that he had previously received in Chicago that had  
02:11PM 10 been arranged by Mr. Castillo-Martinez also.

11 I don't believe it's necessary for today's purposes to  
12 go into all the details, but that would flesh out a little bit  
13 those paragraphs that you've already referred to.

14 THE COURT: Do you understand, Mr. De La Rosa, that the  
02:11PM 15 Government would expect to introduce evidence of that nature  
16 before the jury?

17 THE DEFENDANT: Yes.

18 THE COURT: I understand that Mr. DeJesus and others were  
19 also prepared to testify in this case?

20 02:11PM MR. SHERMAN: Yes, we have also indicated to  
21 Mr. De La Rosa that both Mr. Castillo-Martinez and Mr. DeJesus  
22 would be witnesses at his trial for the Government.

23 THE COURT: All right. On the cooperation, just jumping  
24 back to that, is there any expectation that Mr. De La Rosa may be  
02:12PM 25 asked at some point to testify at a grand jury or trial

1 proceeding?

2 MR. SHERMAN: Yes.

3 THE COURT: All right. Mr. De La Rosa, you understand  
4 that's part of the cooperation package?

02:12PM 5 THE DEFENDANT: Yes.

6 THE COURT: All right, Mr. De La Rosa, we've been doing  
7 all the talking here. Do you have any questions so far of me or  
8 your lawyer, Mr. Okay?

9 THE DEFENDANT: No.

02:12PM 10 THE COURT: All right. Anything else about the agreement  
11 that we should talk about, gentlemen, before I talk to  
12 Mr. De La Rosa about his legal rights?

13 MR. SHERMAN: No, Your Honor.

14 MR. OKAY: No, sir.

02:13PM 15 THE COURT: All right. Well, Mr. De La Rosa, a couple of  
16 questions. Has anybody forced you or threatened you to get you to  
17 come in here and take this plea?

18 THE DEFENDANT: No.

19 THE COURT: All right. One of the things I do in every  
02:13PM 20 case is to make sure the person who pleads guilty understands all  
21 of his rights, and that the first right we talk about is the right  
22 to have a trial and have a jury decide if you're convicted or if  
23 you're innocent or guilty of this charge.

24 In your case this might not be necessary because we,  
02:13PM 25 after considerable period of time, we have scheduled your case to

1 start tomorrow morning, as a matter of fact. But I want to still  
2 make sure on the record you understand that there's no rule in our  
3 system of justice here in this country that a person has to step  
4 up and plead guilty.

02:13PM 5 Do you understand that you have a right to have a jury  
6 trial and have the jury determine whether you're innocent or  
7 guilty of this charge?

8 THE DEFENDANT: Yes.

9 THE COURT: By "jury trial" I mean a public proceeding  
02:14PM 10 that would take place here in this courtroom. You would have to  
11 be here at all parts of the trial. You would have the help of  
12 your lawyer, you would have the help of an interpreter.

13 You would get to listen to all the evidence, much of it  
14 of course you've already reviewed in the pretrial setting.

02:14PM 15 Through your lawyer you could cross-examine any witness,  
16 whether it was one of your co-conspirators or some other police  
17 witness. And I think you received or your lawyer did a witness  
18 list of the 14 or so people scheduled to testify; you and your  
19 lawyer could cross-examine those witnesses at trial.

02:14PM 20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Through the subpoena power of the Court you  
23 could subpoena witnesses to come testify for you or you could  
24 subpoena evidence to be used at your trial. You yourself could  
02:15PM 25 produce witnesses.

1           And you also have the right to take the witness stand  
2 and testify in your defense if you wish to do that, but nobody --  
3 including the Court or the Government -- can make a person take  
4 that witness stand and testify if that person is the defendant.

02:15PM 5           Do you understand that?

6           THE DEFENDANT: Yes, sir.

7           THE COURT: And if you did go to trial and testify -- or  
8 rather decided not to testify, I would be required to tell the  
9 jury that they couldn't hold that fact against you, that is, the  
02:15PM 10 fact that you decided not to testify.

11           And I guess to sum up all these trial rights, the  
12 Government would have to prove your guilt by introducing evidence,  
13 live witnesses, documents, physical evidence, wiretaps, and  
14 convince a jury by what we call "proof beyond a reasonable doubt."

02:16PM 15 That means the Government would have to remove any reasonable  
16 doubt that might exist in any of the minds of the jurors.

17           Do you understand that's the standard we have here for  
18 proving criminal cases --

19           THE DEFENDANT: Yes.

02:16PM 20           THE COURT: -- if you continue? Your desire to plead  
21 guilty and plead guilty here in a minute, do you understand that  
22 all those trial rights that I mentioned will be given up or waived  
23 because when one pleads guilty, we don't have a trial?

24           Do you understand that?

02:16PM 25           THE DEFENDANT: Yes.

1                   THE COURT: And you understand if you plead guilty, the  
2 only thing left for you is to cooperate, if you wish to, and for  
3 me then is to decide after a few months what the fair sentence  
4 should be for you under all the circumstances?

02:16PM 5                   Do you understand that?

6                   THE DEFENDANT: Yes, sir.

7                   THE COURT: Mr. Okay has been your lawyer in this case  
8 and has worked with you. Are you satisfied with his help and  
9 legal advice in this matter?

02:17PM 10                  THE DEFENDANT: Yes, sir.

11                  THE COURT: Do you have any problems or complaints or  
12 beefs between you two that we need to kind of sort out here?

13                  THE DEFENDANT: No, sir.

14                  THE COURT: Okay. I ask you one more time if you have  
02:17PM 15 any questions? If not, we are at a stage where we do some paper  
16 signing.

17                  Any questions, sir, you have of me or your lawyer,  
18 Mr. Okay?

19                  THE DEFENDANT: No, sir.

02:17PM 20                  THE COURT: All right. Unless the lawyers have anything,  
21 we are presented with the signing of the plea agreement, which  
22 Mr. De Chateuvieux has said he read to you and translated for you  
23 last week on at least one occasion.

24                  Sir, are you prepared to sign that agreement this  
02:18PM 25 afternoon?

1           THE DEFENDANT: Yes, sir.

2           THE COURT: I'd ask you to do that.

3           THE INTERPRETER: Your Honor, I have this signed from me.

4 Do you want me to sign the new one or just attach this one?

02:18PM 5           THE COURT: Why don't you sign the one that  
6 Mr. De La Rosa just signed?

7           THE INTERPRETER: Do you want me to put the actual date  
8 of the translation or today's date?

9           THE COURT: The date you actually read it to him.

02:18PM 10          THE INTERPRETER: It was October 11th when I read it to  
11 him.

12          THE COURT: All right, so we have one document. Why  
13 don't you write that on the document we have today?

14          THE INTERPRETER: I will.

02:18PM 15          THE COURT: Seems to be all right.

16          Mr. De La Rosa has signed this plea agreement; and we  
17 also have the certification of the interpreter that he did  
18 translate and interpret this in full for Mr. De La Rosa on  
19 October the 11th, which was this past Saturday. So we'll direct  
02:19PM 20 that that be --

21          MR. SHERMAN: Your Honor, I think we would ask to mark  
22 that as a Court exhibit.

23          THE COURT: All right, we'll mark this as Court  
24 Exhibit 1 and return it to the Government to retain as an exhibit;  
02:19PM 25 and copies only to be made available on request if Mr. Okay or

1 Probation want it.

2 MR. OKAY: No objection.

3 THE COURT: Okay. All right, sir, the next matter is for  
4 me to read the charge to you and then ask you how you plead.

02:20PM 5 The charge is, sir, that beginning in or about June 2002  
6 and up to December of 2004, in this district, you -- together with  
7 Marcelo Montilla, Roberto Olivo-Estrella and others, that you did  
8 knowingly conspire, combine and agree together, with others, to  
9 commit drug crimes against the United States, that is, to possess  
02:20PM 10 with intent to distribute and to distribute 5 kilograms or more of  
11 a detectable amount of cocaine.

12 As to that count how do you plead at this time, guilty  
13 or not guilty?

14 THE DEFENDANT: Guilty.

02:20PM 15 THE COURT: All right, there is a forfeiture allegation  
16 here in this indictment which indicates that you agree, together  
17 with others, to forfeit to the United States the sum of \$1 million  
18 as a result of the drug activity mentioned, and that a judgment  
19 would be entered against you in that amount.

02:21PM 20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, after discussing this with  
23 Mr. De La Rosa, I believe he's competent and capable of entering a  
24 plea; the plea is knowing and voluntary; there certainly appear to  
02:21PM 25 be facts to support the plea.

1           Therefore, I will accept the guilty plea and order a  
2 presentence report.

3           And we should schedule the matter -- are we ready to  
4 schedule the matter for sentencing?

02:21PM 5           MR. SHERMAN: We're going to need some time, Your Honor.

6           MR. OKAY: I would agree with that.

7           THE COURT: Give me a suggested date, or a month or a  
8 year.

9           MR. SHERMAN: At least four months.

02:22PM 10          MR. OKAY: I think that would -- I don't think we need to  
11 take another year, Your Honor. I think four months might be  
12 adequate.

13          THE COURT: Adequate?

14          MR. OKAY: Yes.

02:22PM 15          THE COURT: All right. Well --

16          MR. SHERMAN: With the understanding that we may have to  
17 come back with an adjournment request.

18          THE COURT: Well, I'm going to put it into April. But,  
19 Mr. Okay, if you and your client feel aggrieved and want to move  
02:22PM 20 this sentence up, let me know and I can accommodate you.

21          To try to eliminate unnecessary requests for  
22 adjournment, I'm going to put it into April, but certainly -- just  
23 because I anticipate with cooperation it may take some time.

24          Mr. Okay, you and/or the Government can certainly seek  
02:22PM 25 to get the case on my sentencing calender much earlier, and I

1 could do it in relative short order, if necessary.

2 MR. OKAY: Thank you very much, Your Honor.

3 THE COURT: Ms. Rand, so why don't we pick a sentencing  
4 date? Let's see, the 12th is Easter, so maybe --

02:23PM 5 THE CLERK: How about April 28th at 3 o'clock?

6 THE COURT: All right, April 28th. Mr. De La Rosa, that  
7 seems like a long time, but it's put out that far to assist you.

8 And as I told your lawyer, if you all want to move this  
9 sentence up, we can certainly do that. But for now it will be  
02:23PM 10 April 28th at 3 o'clock for sentencing proceedings.

11 And if there are any sentencing materials, my rule  
12 requires me to get it, I think, four days beforehand.

13 All right, anything else? We will cancel the jury for  
14 tomorrow.

02:24PM 15 All right, thank you, sir. I think I did have the  
16 pretrial submissions, Mr. De La Rosa, and I reviewed much of the  
17 evidence and I think this is probably a case in your case, in  
18 terms of potential penalty, you have the benefit to get some  
19 benefit by doing this, which had you gone to trial would not have  
02:24PM 20 been there. And for what it's worth, I think the evidence against  
21 you is pretty strong, and I think the kind of evidence that would  
22 make an impression on a jury because of the drug amounts and the  
23 money and so forth, kidnappings. So your lawyer worked hard on  
24 your behalf. Thank you.

02:24PM 25 MR. OKAY: Thank you very much, Your Honor.

1 (WHEREUPON, the proceedings adjourned at 2:24 p.m.)

2 \* \* \*

3 CERTIFICATE OF REPORTER

4

5 I certify that the foregoing is a correct transcript to the  
6 best of my ability of the record of proceedings in the  
7 above-entitled matter.

8

9 S/ Christi A. Macri

10 Christi A. Macri, FAPR-RMR-CRR-CRI  
Official Court Reporter

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